

EXTRACT

RELATIVE TO THE IMPORTANCE

OF

THE LEHIGH NAVIGATION,

TO THE COMMONWEALTH,

**FROM THE REPORT OF THE COMMITTEE OF THE SENATE OF
PENNSYLVANIA, UPON THE SUBJECT OF**

THE COAL TRADE,

By S. J. PACKER, CHAIRMAN.

**READ IN SENATE, MARCH 4, 1834, AND ORDERED TO BE
PRINTED.**

EXTRACTED FROM PAGES 462 TO 471,

OF

SENATE JOURNAL, 1833-34, VOL. 2.

HARRISBURG :

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TO THE MEMBERS OF THE LEGISLATURE.

As the Committee of Senate, appointed in pursuance of a resolution upon the subject of coal, have so completely answered all matters of complaint against the Lehigh company, in the following extract from their report to Senate, after making a personal examination on the ground and confronting the parties; we cheerfully submit their report without comment, and the only part we conceive we now have to perform, is to carry out the desire expressed by the committee, in a spirit, that while it meets the public feeling, with the utmost liberality, awards justice to the Lehigh Coal and Navigation company. To meet this feeling as proposed by the said committee, we now formally make the following proposals:

First: We are willing to sell to the State our whole interest in the navigation at cost and interest, as proposed to the committee of the House of Representatives.

Second: Or we are willing to yield up to the State all our interest in the upper section of the Lehigh, free from any charge, although we have expended on this part about \$40,000, so that the state may improve it by canal and slackwater, or by rail road as they please.

Third: Or we are willing to consummate our engagements with the Legislature, as proposed in our bill now before the Senate, not by finishing the same in twenty four years in accordance with the existing laws, but in the short space of six years, and without asking any new privileges affecting the interests of others.

All of which is respectfully submitted.

JOSIAH WHITE,
ERSKINE HAZARD,

On behalf of the Lehigh Coal and Navigation company.

EXTRACT, &c.

"The Beaver Meadow company have authority to construct a rail road from their mines to the Lehigh, and down the river to the Delaware division of the Pennsylvania canal. It may, however, depend upon the will of the Lehigh coal and navigation company, and perhaps upon the course of policy which the Legislature may adopt in reference to the subject generally, whether it shall become necessary to make this road; and whether, if made, such negotiation between the State and the navigation company may not afterwards

be entered into, as will accommodate the trade of the second coal district, and also the increasing trade of the upper country, and thus render the rail road in a measure useless and unnecessary.

“ During the recess, a communication was received from a committee appointed by a convention of delegates, representing several of the northern counties interested in the navigation of the Lehigh, asking an investigation of the grounds of complaint against the Lehigh coal and navigation company. Conceiving that the Senate had not imposed upon the committee the duty of investigating all the charges, whether real or imaginary, that have from time to time been preferred against this company, and which were before another committee of the Senate at the last session of the Legislature, they directed their attention only to such facts as might, in their judgment, illustrate the effect of the acts and operations of the company (having mining and trading privileges,) upon individual enterprise, and the improvement and general prosperity of the country. For this purpose, certain queries were addressed to the committee of the Conyngham convention. Their answers, as also such parts of the replies of the Lehigh navigation company as appear applicable to this branch of the inquiry, are inserted in the appendix, Nos. 19, 20 and 21, and present fully the views of the complainants.

“ The river Lehigh is the natural route to market for several of the northern counties. It was declared a public highway as early as 9th March, 1771. Private subscriptions were made at an early day to improve the navigation, and commissioners appointed by the same act to appropriate and expend the money. What amount was then raised is not known, but it may safely be presumed to have been very inconsiderable. The Legislature, by the act of 15th April, 1791, appropriated *one thousand pounds* to improve the Lehigh “from its junction with the Delaware so far up the same as the sum would admit;” and on the 27th February, 1798, a company was incorporated “for the purpose of improving the navigation,” and a lottery authorised in aid of the improvement. It does not appear that any thing was done by this company in the way of improving the Lehigh, although the object was never lost sight of.— By act of 7th March, 1810, commissioners were appointed to supply the places of those who were deceased or had declined to serve and on the 24th March, 1817, an act was passed for the general improvement of the State, which act authorised the Governor to subscribe for six hundred shares of the stock of the old company to be paid as soon as a similar amount should be subscribed by individuals. At this time, or before the meeting of the next Legislature, the subject was taken hold of by Messrs *White, Hazard and Hauto*, who, on the 20th March, 1818, obtained the passage of a law conferring upon them the right of improving the navigation of the Lehigh, which act repeals so much of the law of 1817 as authorised the Governor to subscribe to the stock of the old company. So that the sum of one thousand pounds, is the whole amount

money ever appropriated by the State for the improvement of that river. It passed by the act of 1818, into the hands of the present company, in a state of nature, and the grant was subsequently confirmed to them and their successors, by an act of incorporation of the 13th February, 1822, by the name of the Lehigh coal and navigation company; at which time the company surrendered two thirds of the tolls they were entitled to charge under the former law.

“ This grant was an extensive one; and although at this day it may be viewed by some as an extraordinary relinquishment of sovereignty, and a singular encroachment upon the natural rights of our citizens; it was at that time regarded as an inducement scarcely commensurate with the magnitude and the hazard of an enterprise which had long been projected and repeatedly attempted, but which had as long been delayed or as frequently baffled. Few other men or other companies, it is presumed, could have been found willing to commence the work upon less favorable terms, and much more extensive privileges would no doubt have been conferred by the State, had they been deemed essential to the accomplishment of the object. It conferred upon the company with certain limitations, the sole jurisdiction of the river Lehigh, for the distance of eighty three miles, and the free and uncontrolled use of its waters. So dangerous and hazardous was the natural navigation of the river regarded at that day, and so difficult was it to transport coal over the mountain from the first coal field to the stream, that the Mauch Chunk coal lands, now so valuable, were leased by the company for a period of twenty years for the payment of the rent of *one ear of Indian corn* annually.

“ The company first improved the river by artificial locks and other devices, at an expense of one hundred fifty five thousand four hundred and twenty dollars. This improvement being greatly interrupted by freshets and failing generally to answer the purpose, the present navigation, admitted to be the best in the United States, was constructed at an expense of one million five hundred forty six thousand ninety-four dollars and ninety-six cents. The different rail roads and other improvements made by the company to the mines, &c. cost the sum of three hundred twenty-three thousand five hundred eighty dollars and twenty-seven cents. Repairs and other expenses, one hundred seventy one thousand ninety five dollars and ninety one cents: Whole original cost of improvement, two millions one hundred ninety six thousand one hundred ninety six dollars and fourteen cents. From the limited examination of the subject by the committee, they have not been able to perceive, that in the expenditure of this large sum of money in the completion of their works, and in the expenditure of an additional sum of about one million of dollars in carrying on the coal trade, the company have violated the letter of their acts of incorporation, or committed any act which would be deemed to amount to a forfeiture of their charter. They completed the lower grand division from Nesqueho-

ning to the mouth of the Lehigh, 48 miles, nine years before the time limited for its completion, and have commenced the upper division within the seven years prescribed by law for that purpose. Nor is it pretended they have imposed higher rates of toll than the law authorizes them to charge. It is argued, however, that they have laid exorbitant tolls for the purpose of prohibition; and that this amounts to such abuse and misuse of their charter, as would justify the Legislature in resuming the grant. The committee think otherwise. So long as the company keep within the provisions of the law, and do not assess a higher toll than the law permits them to receive, they may impose it either for the purpose of prohibition or for the purpose of remunerating the stockholders for their large expenditures. Their acts and not their motives must determine whether they have or have not forfeited their chartered privilege. Whether they have adopted a wise or erroneous policy, which, by grasping after large tolls, may prevent them from receiving any, is a question between them and the stockholders. And even if the grant as is contended with ability by the convention were unconstitutional, still the Legislature having conferred the power upon the company for the accomplishment of a great public object, and the individuals so authorised having in good faith executed the trust, and expended their substance in pursuance of the law, the state would be bound in equity to see them out, and to remunerate them for any loss which they might sustain by reason of a decision of the proper tribunal, that the Legislature had exceeded its authority, and that the charter was of consequence null and void.

“The company, therefore, having in nowise violated their chartered privileges, the issue is, in the opinion of the committee, not between them and the people, but between the people and the Legislature. We are thus led to inquire, how the people have been affected by this legislative grant, and what are the natural consequences resulting from it? That the people at large have enjoyed many benefits which they otherwise would not have enjoyed, cannot be denied. The country in consequence has been to some extent improved—large sums of money have been and continue to be yearly expended, passing into the hands of the labourer and mechanic, and a permanent market is created in the mountains for all the produce of the farmer. The river Lehigh, formerly a wild, rugged and dangerous stream, has been converted into a safe, permanent and excellent navigation. These are some of the many advantages conferred by the grant upon the public. Let us inquire whether it may not be turned to still greater advantage, and subserving the views of the many, instead of those of the few, become productive of greater good—and whether instead of retarding it may not become the means of improving and enriching the whole face of the northern territory of the state—of converting the wilderness and barren mountains into usefulness and value, and of augmenting the trade and strengthening the resources of our metropolis.

“Every charter or act of incorporation, is to a greater or less extent, an infringement upon the natural rights and liberties of the people—and their natural tendency is to monopoly. As an auxiliary or additional stimulant to this inherent principle of corporate lies, the Lehigh Coal and Navigation Co. possess, by express legislative grant, the privilege of mining and transporting coal—a power which, when connected with an improvement depending alike on its tolls for support must ultimately prove its own bane, and become injurious to the interests of the community—and this, by a strong inducement that is presented to the company to monopolize the trade, and to keep down competition. Companies, like individuals, will endeavour always to pursue their own interests ; and they believe they can realize a greater profit by engaging themselves in a particular branch of trade than by relying upon tolls accruing from the produce of others engaged in the same business, they will of course embark in the trade, and endeavor to monopolize it. They will not be willing to furnish upon equal terms facilities to their competitors of the same trade, nor allow them upon any ground “to plough with their own oxen.” They will, unless prevented by their charter, raise their tolls so high as to exclude him from market, and throw every other obstacle in the way. This is the state of things naturally resulting from the operations of incorporated companies possessing these powers ; and the great and radical error of former legislatures in reference to this subject has been, in the opinion of the committee, the blending of trafficking privileges with the authority to construct canals and rail roads, which, instead of being great and free communications for the accommodation of the whole country, belong to private companies, with authority to use them for their own benefit, and to lock up or open at pleasure the sources of a whole valley or community. The Schuylkill navigation and the improvements at Pottsville, when contrasted with those now under consideration, abundantly demonstrate the correctness of this position. And yet, had similar privileges been considered necessary to ensure the completion of the work, they would no doubt have been conferred by the Legislature upon the Schuylkill Navigation company ; and of course a policy similar to that pursued by the Lehigh company would have been adopted. But, coal was not then regarded as an object of much importance, the company, as appears in their memorial, having in view, primarily, the lumber and agricultural trade of the Schuylkill valley.

“While the committee therefore deprecate the policy of uniting trafficking privileges with the authority to make public rail roads and canals, (believing that this constitutes the strongest grounds of objection to such companies,) and while they believe that the Lehigh company might have adopted a course of policy more conducive to public prosperity and convenience, as well as to their own interests, they are of opinion that any other company might have pursued a similar policy under like circumstances ; and that if the people on

the Lehigh have been subjected to hardship or inconvenience, it has been done *according to law*; and perhaps few other companies with powers and privileges of like extent, would have exercised them with greater lenity, or with more advantage to the public. No complaints are known to exist, excepting in relation to the transportation of coal. Indeed, if the public had any assurance that the policy of the company would remain as now established, there would be little necessity for legislative interference. They have reduced their tolls on coal for 1834, from one dollar and three cents to seventy-three cents a ton, for forty-six miles. They have thrown open to sale, lots in the town of Mauch Chunk, "free from any restrictions on the business or occupations of purchasers." Churches, store-houses and shops have recently been erected, and mechanics of all descriptions are now established in the town, and begin to breathe the air of liberty. But, the affairs of the company are managed by a board of directors. The present stockholders, as well as the directors, may soon be succeeded by others with different views and different feelings. Those of the next year may reverse the proceedings of their predecessors; and it is not to be expected that individuals will this year engage in the coal trade in the second coal field, or construct rail-roads from the mines to the canal, when next year, by a single resolve of another board of directors, the policy may be changed, and upon a sudden rise in the coal market, or from any other cause, their coal be prohibited by high tolls from passing upon the canal. It is on account of this state of fluctuation and uncertainty, that the country above Mauch Chunk on the Lehigh, has thus long remained a howling wilderness, without population; the second coal field without miners, and the contemplated improvement to connect the Lehigh with the North Branch of the Susquehanna so long delayed. These improvements, so vitally important to the northern section of the State, will never, it is feared, be made, while the Lehigh navigation remains in the hands of an incorporated company, holding and exercising mining and trading privileges.

"Then, is there any remedy—any healing in the law for this malady—any measure which, while it shall render full justice to those who have expended their money and their labor upon the faith of our laws, may restore the people to their natural rights, bring forth the mineral resources of another section of the state, increase the population, and open another avenue to the city of Philadelphia, a trade which has hitherto sought a different and a more distant market? The rates of toll as at present established on the Delaware division of the Pennsylvania canal, are half a cent a ton per mile or thirty cents a ton from Easton to Bristol, sixty miles; and complainants suggest the propriety of imposing the same rate of toll upon the Lehigh coal passing upon this canal that the company charge on the Lehigh navigation, and thus bring them to terms—in other words, to put in force the law of retaliation. At first view there would appear to be some equity in this; but, another thou

will demonstrate its entire inexpediency. It would evidently have a tendency to drive the coal out of the Pennsylvania canal into the Morris canal, commencing at Easton and extending to Newark in New Jersey, or into the bed of the river to the navigable feeder of the Delaware and Raritan canal, twenty five miles below Easton, through which it might pass twenty two miles to Trenton—thence by sloop to Philadelphia, or by the main canal from Bordentown to New Brunswick and to New York. The State would therefore not only lose the tolls on the Mauch Chunk coal, but it might after all be well doubted whether the people owning coal lands above would build up improvements and engage in the coal business upon the strength of a tenure so fragile, and a guaranty so novel and precarious. Besides, our public improvements having been constructed at the common expense, and with the joint funds of the people, and for the equal benefit of all, it would seem to be invidious and unjust to compel one portion of citizens to pay a heavier tax than those of another.

“The committee therefore, without entering more minutely upon an investigation not immediately contemplated by their appointment, but viewing the subject as closely identified with the best interests of the Commonwealth, are led to the conclusion that the state ought to adopt the only alternative which appears to be free from difficulty or doubt: the purchase of the Lehigh navigation. In the act of 1818, the Legislature reserve the right to purchase after the expiration of thirty six years, and also to forfeit the charter in case of misuse or abuse. What was the object of the first reservation? Either that, at the expiration of thirty six years, the company would be fully compensated for the expense and cost of the work, and its profits and advantages become too great and their power and patronage too extensive to be wielded by a chartered monopoly, and that consequently they might become injurious to the public interests; or, that in the more advanced state of population and commerce, it should be required for more general purposes, and ought therefore to revert to the state for the common use and benefit of her citizens. It cannot for a moment be supposed that the reservation meant nothing, and that the State intended forever to relinquish to a private company all jurisdiction and control over so important a stream, and so extensive and valuable a territory.—Should either of these events occur before the expiration of thirty six years, the same reasons will exist, in fact, for the interposition of the Legislature. It is suggested also, that even in the absence of misuse or abuse on their part, the State may, by an arbitrary act of legislation, resume all the immunities and privileges of the company, and deprive them of their rights of property; that this high prerogative is lodged in the people and may be exercised by their representatives, whenever the sacrifice is required for the public good, giving at the same time full compensation for the property taken, or establishing a tribunal to ascertain by law the quantum of damage sustained—that it is inconsistent with our ideas of legislation and

sovereignty, to believe that the Legislature can create a power greater than itself, or one that may control, and forever set its authority at defiance—that the distinctions between the rights of artificial and natural persons is more fancied than real, and that there is nothing more sacred, in the immunities of a charter than in the vested rights of the citizen in his lands and buildings which he has purchased from the State to be enjoyed by himself, and dying, to be transmitted to his children; and yet the State by an arbitrary act of legislation freely takes the one and the other whenever and wherever it may be required for public purposes—and more than all prescribes her own terms and her own time for making reparation to the injured party. To some of these positions the committee fully assent. If the State have not the power to take the property of a corporation when required for more general purposes, our public works must stop short whenever they reach a borough line. They agree with the company that “our courts of law are the proper tribunals to decide the constitutionality of a charter;” but they insist that it is for the Legislature to determine whether the farther exercise of the corporate powers of a company, (whether this reservation be contained in the charter or not,) be inconsistent with the paramount interests of the public—and if so, to resort to the chancery powers vested in them by the Constitution, “to grant relief in equity as shall be found necessary.” In the present case, however, it is not necessary to enter upon grounds so debateable. Whatever may be the nature of the grant—the rights of the company and the powers of the Legislature, the State is bound to respect them, and in good faith to preserve them inviolate. It is not necessary to adopt a measure the expediency of which can be at all questionable. The company are willing to sell their canal, reserving their mining privileges, and the committee are unanimously of opinion that the State ought to purchase. Those acquainted with the local situation of the eastern end of the first coal field, and the lands owned by the company will be satisfied that although individual manse might be adequate to the task, yet that no individual in his private capacity, would be willing at this day, to undertake the transportation of coal, to any considerable extent, over the mountains from the mines to the Lehigh. As a coal company, therefore located at this place, they must remain with safety and for the purpose of beneficial competition be allowed to remain. Then, how are we to be benefitted by the purchase? In the first place:

“The state will again be put into possession of the valley of the Lehigh, and by uniting the Lehigh navigation with the Delaware canal a free and permanent communication will be opened from the three great anthracite coal fields of Pennsylvania to the sea board. This is a sufficient inducement; but it is not all: a communication will be opened through which will pass the various and valuable productions of the Wyoming valley, of the north branch of the Susquehanna, of the Genessee river and the lakes; and the people inhabiting a large portion of our great rival be placed several mi-

nearer to Philadelphia than their own city, New York. This trade will be drawn to our own city—our merchandise and our coal will be readily received in exchange, and the tonnage upon the whole secured to our own canals. The improvements designed to connect the Susquehanna with the Lehigh, hitherto prevented by the uncertain or unknown policy of the company will immediately be made. A canal, it is ascertained by actual examination may be made from Berwick, on the north branch of the Susquehanna, by the valley of the Nescopeck to the Lehigh; and a rail road from Wilkesbarre to the mouth of Wright's creek, a distance of fourteen miles only is practicable, and would doubtless be placed under immediate contract. The rail road from the Beaver meadow mines to the Lehigh would be prosecuted to immediate completion, and other rail roads from various parts of the second coal field would soon be seen to intersect the canal and pour their treasures into market. A population, equal perhaps to that of the first coal district would soon grow up in these now barren and desolate mountains. In this, there is no fiction. We see that such things have real existence; and the truth is practically demonstrated by the experience around us, that the state can never go wrong in constructing or purchasing a canal or railroad, leading from or passing through a coal region. Nor would a company err in doing so, were the navigation thrown open to the free exercise of individual enterprise and competition.

“Again, the state ought to own the Lehigh canal for another reason. The Delaware division of the Pennsylvania canal, from Easton to Bristol, sixty miles, cost the state one million, four hundred and thirty thousand, two hundred and eleven dollars and eighty-five cents, the annual interest of which at five per cent. is seventy-one thousand, five hundred and ten dollars and fifty-nine cents. The Morris canal, commencing on the opposite side of the river, as also the Delaware and Raritan canal and other improvements contemplated in New Jersey will be found greatly to increase the coal trade of the Lehigh. By uniting the Lehigh and Delaware canals a proper share of this trade would be secured; and there can be no doubt that in a few years the coal alone will pay the interest of the whole sum invested in both canals. In 1832, the Mauch Chunk company paid to the state in tolls on the Delaware canal, seventeen thousand, six hundred and forty-six dollars and sixty-one cents, and in 1833, notwithstanding the breaches in the canal forced many thousands to take the river in arks, thirty-one thousand, nine hundred and forty-one dollars, and sixty-eight cents, a sum nearly equal to half the interest of its original cost. The Lehigh navigation is admitted to be superior in all respects to any other work of a similar nature in the United States. The work is executed in the best manner, and its banks have now become solid and permanent and of course will require but little repairs. It is forty-five feet at bottom, sixty feet at surface, and contains five feet depth of water. Its locks are twenty-two feet in width, and one hundred feet clear in the chambers, and are calculated for single boats of one hundred and fifty tons, or

double boats of seventy-five tons burden. It is forty-six miles in length, with forty-seven lift and six guard locks and nine dams. The whole lockage from Mauch Chunk to low water in the Delaware at Easton is three hundred and sixty feet. Its original cost, including damages, &c. is one million, five hundred and forty-six thousand, ninety-four dollars and ninety-six cents, and including former river improvements, upper and lower sections, clearing channels, &c., one million, eight hundred and seventy-two thousand, six hundred and ten dollars and eighty-seven cents. The same work would perhaps have cost the state double this sum. The company are obliged by their charter to improve the river Lehigh as far as Stoddardsville, and a release from this duty would of course be an important consideration in a negotiation for the purchase of their navigation. The committee are not authorised to communicate to the Senate the precise sum for which the company will agree to convey, not having entered into any direct correspondence upon this point; but are authorised to say that they will take in payment the certificates of debt, without putting the state to the necessity of raising the money, and further, "that they will guarantee, for the ensuing five or seven years, that the tolls on coal from their mines alone shall pay annually seven-tenths of the interest of the purchase money, and more, if the tolls amount to more." Assuming for the purpose of illustration, that the purchase at present would amount to two millions of dollars, seven-tenths of the interest would be seventy thousand, and the remaining three-tenths thirty thousand dollars. This latter sum, therefore, exclusive of the ordinary expenses, is all that would be required, from all other sources, to meet the interest of investment. Can it be for a moment believed that the immense resources of the second coal field, and the vast trade of the north would not pay in tolls the sum of thirty thousand dollars annually? The history of the times, and the practical experiments of the day dispel every doubt upon the subject. Let us not be intimidated by the present depression (momentary it is hoped) in the pecuniary affairs of the state. Let this circumstance rather urge us to adopt such measures as will place the state beyond the reach of embarrassment—out of the danger of internal as well as external commotion, and upon the high eminence in the scale of the Union, which she is entitled to occupy, and to which she has the power to ascend. By judiciously fostering our mineral resources, we may place the state upon a basis too solid to be shaken. Our coal and our iron will be found to constitute an inexhaustible source of wealth, and the surest indemnity for our vast state and individual expenditures. Allow them freely to put forth their strength, and the gloom that now hangs over our public improvements will speedily vanish, and our public debt be rapidly diminished, and in time entirely discharged. The committee therefore, respectfully, but earnestly recommend, by every motive of State policy, the purchase of the Lehigh navigation, and with this view suggest the propriety of adopting a resolution requesting the company to state specifically the terms upon which they will agree to convey."

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“ The river Lehigh is the natural route to market for several of the northern counties. It was declared a public highway as early as 9th March, 1771. Private subscriptions were made at an early day to improve the navigation, and commissioners appointed by the same act to appropriate and expend the money. What amount was then raised is not known, but it may safely be presumed to have been very inconsiderable. The Legislature, by the act of 15th April, 1791, appropriated *one thousand pounds* to improve the Lehigh “from its junction with the Delaware so far up the same as the sum would admit;” and on the 27th February, 1798, a company was incorporated “for the purpose of improving the navigation,” and a lottery authorised in aid of the improvement. It does not appear that any thing was done by this company in the way of improving the Lehigh, although the object was never lost sight of.— By act of 7th March, 1810, commissioners were appointed to supply the places of those who were deceased or had declined to serve and on the 24th March, 1817, an act was passed for the general improvement of the State, which act authorised the Governor to subscribe for six hundred shares of the stock of the old company to be paid as soon as a similar amount should be subscribed by individuals. At this time, or before the meeting of the next Legislature, the subject was taken hold of by Messrs *White, Hazard* and *Hauto*, who, on the 20th March, 1818, obtained the passage of a law conferring upon them the right of improving the navigation of the Lehigh, which act repeals so much of the law of 1817 as authorised the Governor to subscribe to the stock of the old company. So that the sum of one thousand pounds, is the whole amount of

money ever appropriated by the State for the improvement of that river. It passed by the act of 1818, into the hands of the present company, in a state of nature, and the grant was subsequently conveyed to them and their successors, by an act of incorporation of the 13th February, 1822, by the name of the Lehigh coal and navigation company; at which time the company surrendered two thirds of the tolls they were entitled to charge under the former law.

“ This grant was an extensive one; and although at this day it may be viewed by some as an extraordinary relinquishment of sovereignty, and a singular encroachment upon the natural rights of our citizens; it was at that time regarded as an inducement scarcely commensurate with the magnitude and the hazard of an enterprise which had long been projected and repeatedly attempted, but which had as long been delayed or as frequently baffled. Few other men or other companies, it is presumed, could have been found willing to commence the work upon less favorable terms, and much more extensive privileges would no doubt have been conferred by the State, had they been deemed essential to the accomplishment of the object. It conferred upon the company with certain limitations, the sole jurisdiction of the river Lehigh, for the distance of eighty three miles, and the free and uncontrolled use of its waters. So dangerous and hazardous was the natural navigation of the river regarded at that day, and so difficult was it to transport coal over the mountain from the first coal field to the stream, that the Mauch Chunk coal lands, now so valuable, were leased by the company for a period of twenty years for the payment of the rent of *one ear of Indian corn* annually.

“ The company first improved the river by artificial locks and other devices, at an expense of one hundred fifty five thousand four hundred and twenty dollars. This improvement being greatly interrupted by freshets and failing generally to answer the purpose, the present navigation, admitted to be the best in the United States, was constructed at an expense of one million five hundred forty six thousand ninety-four dollars and ninety-six cents. The different rail roads and other improvements made by the company to the mines, &c. cost the sum of three hundred twenty-three thousand five hundred eighty dollars and twenty-seven cents. Repairs and other expenses, one hundred seventy one thousand ninety five dollars and ninety one cents: Whole original cost of improvement, two millions one hundred ninety six thousand one hundred ninety six dollars and fourteen cents. From the limited examination of the subject by the committee, they have not been able to perceive, that in the expenditure of this large sum of money in the completion of their works, and in the expenditure of an additional sum of about one million of dollars in carrying on the coal trade, the company have violated the letter of their acts of incorporation, or committed an act which would be deemed to amount to a forfeiture of their charter. They completed the lower grand division from Nesqueho-

ning to the mouth of the Lehigh, 48 miles, nine years before the time limited for its completion, and have commenced the upper division within the seven years prescribed by law for that purpose. Nor is it pretended they have imposed higher rates of toll than the law authorizes them to charge. It is argued, however, that they have laid exorbitant tolls for the purpose of prohibition, and that this amounts to such abuse and misuse of their charter, as would justify the Legislature in resuming the grant. The committee think otherwise. So long as the company keep within the provisions of the law, and do not assess a higher toll than the law permits them to receive, they may impose it either for the purpose of prohibition or for the purpose of remunerating the stockholders for their large expenditures. Their acts and not their motives must determine whether they have or have not forfeited their chartered privilege. Whether they have adopted a wise or erroneous policy, which, grasping after large tolls, may prevent them from receiving any, is a question between them and the stockholders. And even if the grant as is contended with ability by the convention were unconstitutional, still the Legislature having conferred the power upon the company for the accomplishment of a great public object, and the individuals so authorised having in good faith executed the trust, and expended their substance in pursuance of the law, the state would be bound in equity to see them out, and to remunerate them for any loss which they might sustain by reason of a decision of the proper tribunal, that the Legislature had exceeded its authority, and that their charter was of consequence null and void.

“The company, therefore, having in nowise violated their chartered privileges, the issue is, in the opinion of the committee, not between them and the people, but between the people and the Legislature. We are thus led to inquire, how the people have been affected by this legislative grant, and what are the natural consequences resulting from it? That the people at large have enjoyed many benefits which they otherwise would not have enjoyed, cannot be denied. The country in consequence has been to some extent improved—large sums of money have been and continue to be yearly expended, passing into the hands of the labourer and mechanic, and a permanent market is created in the mountain for all the produce of the farmer. The river Lehigh, formerly a rugged and dangerous stream, has been converted into a safe, permanent and excellent navigation. These are some of the advantages conferred by the grant upon the public. Let us inquire whether it may not be turned to still greater advantage, and subserving the views of the many, instead of those of the few, become productive of greater good—and whether instead of retarding it may not become the means of improving and enriching the whole face of the northern territory of the state—of converting the wilderness and barren mountains into usefulness and value, and of strengthening the trade and strengthening the resources of our metro-

“Every charter or act of incorporation, is to a greater or less extent, an infringement upon the natural rights and liberties of the people—and their natural tendency is to monopoly. As an auxiliary or additional stimulant to this inherent principle of corporate abuses, the Lehigh Coal and Navigation Co. possess, by express legislative grant, the privilege of mining and transporting coal—a power which, when connected with an improvement depending alike on its tolls for support must ultimately prove its own bane, and become injurious to the interests of the community—and this, by strong inducement that is presented to the company to monopolize the trade, and to keep down competition. Companies, like individuals, will endeavour always to pursue their own interests; and they believe they can realize a greater profit by engaging themselves in a particular branch of trade than by relying upon tolls accruing from the produce of others engaged in the same business, and will of course embark in the trade, and endeavor to monopolize it. They will not be willing to furnish upon equal terms facilities to their competitors of the same trade, nor allow them upon any ground “to plough with their own oxen.” They will, unless prevented by their charter, raise their tolls so high as to exclude him from the market, and throw every other obstacle in the way. This is the state of things naturally resulting from the operations of incorporated companies possessing these powers; and the great and radical error of former legislatures in reference to this subject has been, in the opinion of the committee, the blending of trafficking privileges with the authority to construct canals and rail roads, which, instead of affording great and free communications for the accommodation of the country, belong to private companies, with authority to use them for their own benefit, and to lock up or open at pleasure the sources of a whole valley or community. The Schuylkill navigation and the improvements at Pottsville, when contrasted with those now under consideration, abundantly demonstrate the correctness of this position. And yet, had similar privileges been considered necessary to ensure the completion of the work, they would no doubt have been conferred by the Legislature upon the Schuylkill Navigation company; and of course a policy similar to that pursued by the Lehigh company would have been adopted. But, coal was not then regarded as an object of much importance, the company, as appears from their memorial, having in view, primarily, the lumber and agricultural trade of the Schuylkill valley.

“While the committee therefore deprecate the policy of uniting trafficking privileges with the authority to make public rail roads and canals, (believing that this constitutes the strongest grounds of objection to such companies,) and while they believe that the Lehigh company might have adopted a course of policy more conducive to public prosperity and convenience, as well as to their own interests, they are of opinion that any other company might have pursued a similar policy under like circumstances; and that if the people on

the Lehigh have been subjected to hardship or inconvenience, it has been done *according to law*; and perhaps few other companies with powers and privileges of like extent, would have exercised them with greater lenity, or with more advantage to the public. No complaints are known to exist, excepting in relation to the transportation of coal. Indeed, if the public had any assurance that the policy of the company would remain as now established, there would be little necessity for legislative interference. They have reduced their tolls on coal for 1834, from one dollar and three cents to seventy-three cents a ton, for forty-six miles. They have thrown open to sale, lots in the town of Mauch Chunk, "free from all restrictions on the business or occupations of purchasers." Churches, store-houses and shops have recently been erected, and mechanics of all descriptions are now established in the town, and begin to breathe the air of liberty. But, the affairs of the company are managed by a board of directors. The present stockholders, as well as the directors, may soon be succeeded by others with different views and different feelings. Those of the next year may reverse the proceedings of their predecessors; and it is not to be expected that individuals will this year engage in the coal trade in the second coal field, or construct rail-roads from the mines to the canal, when next year, by a single resolve of another board of directors, the policy may be changed, and upon a sudden rise in the coal market, or from any other cause, their coal be prohibited by high tolls from passing upon the canal. It is on account of this state of fluctuation and uncertainty, that the country above Mauch Chunk on the Lehigh, thus long remained a howling wilderness, without population; the second coal field without miners, and the contemplated improvement to connect the Lehigh with the North Branch of the Susquehanna so long delayed. These improvements, so vitally important to the northern section of the State, will never, it is feared, be made, while the Lehigh navigation remains in the hands of an incorporated company, holding and exercising mining and trading privileges.

"Then, is there any remedy—any healing in the law for the malady—any measure which, while it shall render full justice to those who have expended their money and their labor upon the canal, of our laws, may restore the people to their natural rights, bring into use the mineral resources of another section of the state, increase the population, and open another avenue to the city of Philadelphia for a trade which has hitherto sought a different and a more distant market? The rates of toll as at present established on the Delaware division of the Pennsylvania canal, are half a cent a ton per mile, or thirty cents a ton from Easton to Bristol, sixty miles; and the complainants suggest the propriety of imposing the same rate of toll upon the Lehigh coal passing upon this canal that the company charge on the Lehigh navigation, and thus bring them to terms in other words, to put in force the law of retaliation. At first there would appear to be some equity in this; but, another thing

will demonstrate its entire inexpediency. It would evidently have tendency to drive the coal out of the Pennsylvania canal into the Morris canal, commencing at Easton and extending to Newark in New Jersey, or into the bed of the river to the navigable feeder of the Delaware and Raritan canal, twenty five miles below Easton, through which it might pass twenty two miles to Trenton—thence by sloop to Philadelphia, or by the main canal from Bordentown to New Brunswick and to New York. The State would therefore not only lose the tolls on the Mauch Chunk coal, but it might after all be well doubted whether the people owning coal lands above would build up improvements and engage in the coal business upon the strength of a tenure so fragile, and a guaranty so novel and precarious. Besides, our public improvements having been constructed at the common expense, and with the joint funds of the people, and for the equal benefit of all, it would seem to be invidious and unjust to compel one portion of citizens to pay a heavier tax than those of another.

“The committee therefore, without entering more minutely upon an investigation not immediately contemplated by their appointment, but viewing the subject as closely identified with the best interests of the Commonwealth, are led to the conclusion that the state ought to adopt the only alternative which appears to be free from difficulty or doubt: the purchase of the Lehigh navigation. In the act of 1818, the Legislature reserve the right to purchase after the expiration of thirty six years, and also to forfeit the charter in case of misuse or abuse. What was the object of the first reservation? Either that, at the expiration of thirty six years, the company would be fully compensated for the expense and cost of the work, and its profits and advantages become too great and their power and patronage too extensive to be wielded by a chartered monopoly, and that consequently they might become injurious to the public interests; or, that in the more advanced state of population and commerce, it should be required for more general purposes, and ought therefore to revert to the state for the common use and benefit of her citizens. It cannot for a moment be supposed that the reservation meant nothing, and that the State intended forever to relinquish to a private company all jurisdiction and control over so important a stream, and so extensive and valuable a territory.—Should either of these events occur before the expiration of thirty six years, the same reasons will exist, in fact, for the interposition of the Legislature. It is suggested also, that even in the absence of misuse or abuse on their part, the State may, by an arbitrary act of legislation, resume all the immunities and privileges of the company, and deprive them of their rights of property; that this high prerogative is lodged in the people and may be exercised by their representatives, whenever the sacrifice is required for the public good, giving at the same time full compensation for the property taken, or establishing a tribunal to ascertain by law the quantum of damage sustained—that it is inconsistent with our ideas of legislation and

sovereignty, to believe that the Legislature can create a power greater than itself, or one that may control, and forever set its authority at defiance—that the distinctions between the rights of artificial and natural persons is more fancied than real, and that there is nothing more sacred, in the immunities of a charter than in the vested right of the citizen in his lands and buildings which he has purchased from the State to be enjoyed by himself, and dying, to be transmitted to his children; and yet the State by an arbitrary act of legislation freely takes the one and the other whenever and wherever it may be required for public purposes—and more than all prescribes her own term and her own time for making reparation to the injured party. To some of these positions the committee fully assent. If the State have not the power to take the property of a corporation when required for more general purposes, our public works must stop whenever they reach a borough line. They agree with the comparison that “our courts of law are the proper tribunals to decide the constitutionality of a charter;” but they insist that it is for the Legislature to determine whether the farther exercise of the corporate powers of a company, (whether this reservation be contained in the charter or not,) be inconsistent with the paramount interests of the public—and if so, to resort to the chancery powers vested in the courts by the Constitution, “to grant relief in equity as shall be found necessary.” In the present case, however, it is not necessary to enter upon grounds so debateable. Whatever may be the nature of the grant—the rights of the company and the powers of the Legislature, the State is bound to respect them, and in good faith to preserve them inviolate. It is not necessary to adopt a measure the expediency of which can be at all questionable. The company are unanimously of opinion that the State ought to purchase. Those acquainted with the local situation of the east end of the first coal field, and the lands owned by the company, will be satisfied that although individual manse might be adequate to the task, yet that no individual in his private capacity, would be willing at this day, to undertake the transportation of coal, to a considerable extent, over the mountains from the mines to the sea. As a coal company, therefore located at this place, they will be with safety and for the purpose of beneficial competition be allowed to remain. Then, how are we to be benefitted by the purchase? In the first place:

“The state will again be put into possession of the valley of the Lehigh, and by uniting the Lehigh navigation with the Delaware canal a free and permanent communication will be opened from the three great anthracite coal fields of Pennsylvania to the sea by the Delaware. This is a sufficient inducement; but it is not all: a communication will be opened through which will pass the various and valuable productions of the Wyoming valley, of the north branch of the Susquehanna, of the Genessee river and the lakes; and the people inhabiting a large portion of our great rival be placed several

nearer to Philadelphia than their own city, New York. This trade will be drawn to our own city—our merchandise and our coal will be readily received in exchange, and the tonnage upon the whole secured to our own canals. The improvements designed to connect the Susquehanna with the Lehigh, hitherto prevented by the uncertain or unknown policy of the company will immediately be made. A canal, it is ascertained by actual examination may be made from Berwick, on the north branch of the Susquehanna, by the valley of the Nescopeck to the Lehigh; and a rail road from Wilkesbarre to the mouth of Wright's creek, a distance of fourteen miles only is practicable, and would doubtless be placed under immediate contract. The rail road from the Beaver meadow mines to the Lehigh would be prosecuted to immediate completion, and other rail roads from various parts of the second coal field would soon be seen to intersect the canal and pour their treasures into market. A population, equal perhaps to that of the first coal district would soon grow up in these now barren and desolate mountains. In this, there is no fiction. We see that such things have real existence; and the truth is practically demonstrated by the experience around us, that the state can never go wrong in constructing or purchasing a canal or rail-road, leading from or passing through a coal region. Nor would a company err in doing so, were the navigation thrown open to the free exercise of individual enterprise and competition

“Again, the state ought to own the Lehigh canal for another reason. The Delaware division of the Pennsylvania canal, from Easton to Bristol, sixty miles, cost the state one million, four hundred and thirty thousand, two hundred and eleven dollars and eighty-five cents, the annual interest of which at five per cent. is seventy-one thousand, five hundred and ten dollars and fifty-nine cents. The Morris canal, commencing on the opposite side of the river, as also the Delaware and Raritan canal and other improvements contemplated in New Jersey will be found greatly to increase the coal trade of the Lehigh. By uniting the Lehigh and Delaware canals a proper share of this trade would be secured; and there can be no doubt that in a few years the coal alone will pay the interest of the whole sum invested in both canals. In 1832, the Mauch Chunk company paid to the state in tolls on the Delaware canal, seventeen thousand, six hundred and forty-six dollars and sixty-one cents, and in 1833, notwithstanding the breaches in the canal forced many thousand tons to take the river in arks, thirty-one thousand, nine hundred and forty-one dollars, and sixty-eight cents, a sum nearly equal to half the interest of its original cost. The Lehigh navigation is admitted to be superior in all respects to any other work of a similar nature in the United States. The work is executed in the best manner, and its banks have now become solid and permanent and of course will require but little repairs. It is forty-five feet at bottom, sixty feet at surface, and contains five feet depth of water. Its locks are twenty-two feet in width, and one hundred feet clear in the chambers, and are calculated for single boats of one hundred and fifty tons, or

double boats of seventy-five tons burden. It is forty-six miles in length, with forty-seven lift and six guard locks and nine dams. The whole lockage from Mauch Chunk to low water in the Delaware at Easton is three hundred and sixty feet. Its original cost including damages, &c. is one million, five hundred and forty-six thousand, ninety-four dollars and ninety-six cents, and including former river improvements, upper and lower sections, clearing channels, &c., one million, eight hundred and seventy-two thousand six hundred and ten dollars and eighty-seven cents. The same work would perhaps have cost the state double this sum. The company are obliged by their charter to improve the river Lehigh as far as Stoddardsville, and a release from this duty would of course be an important consideration in a negotiation for the purchase of their navigation. The committee are not authorised to communicate to the Senate the precise sum for which the company will agree to convey, not having entered into any direct correspondence upon this point; but are authorised to say that they will take in payment the certificates of debt, without putting the state to the necessity of raising the money, and further, "that they will guarantee, for the ensuing five or seven years, that the tolls on coal from their mine alone shall pay annually seven-tenths of the interest of the purchase money, and more, if the tolls amount to more." Assuming for the purpose of illustration, that the purchase at present would amount to two millions of dollars, seven-tenths of the interest would be seven thousand, and the remaining three-tenths thirty thousand dollars. The latter sum, therefore, exclusive of the ordinary expenses, is all that would be required, from all other sources, to meet the interest of the investment. Can it be for a moment believed that the immense resources of the second coal field, and the vast trade of the north would not pay the tolls the sum of thirty thousand dollars annually? The history of the times, and the practical experiments of the day dispel every doubt upon the subject. Let us not be intimidated by the present depression (momentary it is hoped) in the pecuniary affairs of the state. Let this circumstance rather urge us to adopt such measures as will place the state beyond the reach of embarrassment—out of the danger of internal as well as external commotion, and upon the high eminence in the scale of the Union, which she is entitled to occupy, and to which she has the power to ascend. By judiciously fostering our mineral resources, we may place the state upon a basis too solid to be shaken. Our coal and our iron will be found to constitute an inexhaustible source of wealth, and the surest indemnity for our vast state and individual expenditures. Allow them freely to put forth their strength, and the gloom that now hangs over our public improvements will speedily vanish, and our public debt will be rapidly diminished, and in time entirely discharged. The committee therefore, respectfully, but earnestly recommend, by every motive of State policy, the purchase of the Lehigh navigation, and with this view suggest the propriety of adopting a resolution requesting the company to state specifically the terms upon which they will agree to convey."